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Arizona Corporation Commission

DOCKETED

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

TOM FORESE  
CHAIRMAN

BOB BURNS  
COMMISSIONER

DOUG LITTLE  
COMMISSIONER

ANDY TOBIN  
COMMISSIONER

BOYD DUNN  
COMMISSIONER

**IN THE MATTER OF THE  
APPLICATION OF ARIZONA  
PUBLIC SERVICE COMPANY  
FOR A HEARING TO DETERMINE  
THE FAIR VALUE OF THE  
UTILITY PROPERTY OF THE  
COMPANY FOR RATEMAKING  
PURPOSES, TO FIX A JUST AND  
REASONABLE RATE OF RETURN  
THEREON, TO APPROVE RATE  
SCHEDULES DESIGNED TO  
DEVELOP SUCH RETURN.**

**DOCKET NO. E-01345A-16-0036**

**DOCKET NO. E-01345A-16-0123**

**IN THE MATTER OF FUEL AND  
PURCHASED POWER  
PROCUREMENT AUDITS FOR  
ARIZONA PUBLIC SERVICE  
COMPANY.**

**ENERGY FREEDOM COALITION  
OF AMERICA'S REPLY BRIEF**

**ENERGY FREEDOM COALITION OF AMERICA**

**REPLY BRIEF**

June 1, 2017

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1 Energy Freedom Coalition of America ("EFCA"), by and through its undersigned  
2 counsel, hereby submits its Reply Brief.

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 **I. INTRODUCTION AND SUMMARY OF ARGUMENTS.**

5 This Reply Brief primarily responds to the arguments that Arizona Public Service  
6 Corporation ("APS" or the "Company") posited in its Initial Post-Hearing Brief (the "APS  
7 Brief"). APS opposes EFCA's proposed optional alternative rates that would remove  
8 barriers to the adoption of peak reducing energy storage technologies for APS' large  
9 commercial customers (the "Optional Rates"). As covered in detail in this Reply Brief, the  
10 APS Brief incorrectly states EFCA's position on certain key items, includes unfounded  
11 assertions, and includes citations that do not support the conclusions APS asserts in its  
12 brief, thus revealing a position that lacks foundation. APS did not present a fact-based  
13 argument built on a developed record. APS' primary argument appears to be that the  
14 Optional Rates would be "the new net metering."<sup>1</sup> As EFCA will demonstrate below, the  
15 Company's argument does not hold up under scrutiny.

16 APS also asserts that EFCA took positions it simply did not take. The incorrect  
17 statements set forth in the APS Brief are material to the issues at hand. Therefore, EFCA  
18 offers the Table below in an effort to consolidate some of the key problems so they can be  
19 reviewed together and not mistaken for fact. These issues are also dealt with in more detail  
20 in the body of the Reply Brief.

21 <b>Problems:</b> 1) Citation offered does 22 not support statement; 2) Incorrectly 23 states EFCA's testimony on a 24 material issue.	"EFCA essentially admits that its complaint solely concerns the potential for first-year savings." <sup>2</sup>
25 <b>Correction:</b>	This is a false statement and the 26 citation does not support it. EFCA 27 identified and proved the existence of

28 <sup>1</sup> Initial Post-Hearing Brief of Arizona Public Service Company (the "APS Brief") at 34:1-2.

<sup>2</sup> APS Brief, 38:22-23 citing Garrett Settlement Rebuttal Testimony [EFCA Ex. at 4].

1		multiple issues with the demand
2		ratchet and offered pages of testimony
3		on these numerous deficiencies. The
4		page APS cited in support of this
5		conclusion includes Mr. Garrett
6		making several arguments against the
7		demand ratchet including that it acts
8		as a fixed charge, sends a poor price
9		signal that delays the customer benefit
10		from actions taken by a year's time,
11		and does not promote reduction in
12		demand at the time of system peak.
13	<b>Problem:</b> APS incorrectly states	"Another difference from the
14	EFCA's position on a material issue.	Commission's earlier adoption of
15		NEM is that NEM advocates denied to
16		the end that NEM caused significant
17		unrecovered fixed costs, or that NEM
18		resulted in a cost shift from
19		participants to non-participants. But
20		here, <i>EFCA cannot and does not make</i>
21		<i>any such denial.</i> " <sup>3</sup>
22	<b>Correction:</b>	EFCA contends that its proposed rate
23		will <i>not</i> cause a cost shift. Mr.
24		Garrett's testimony was clear "there is
25		no cost shift from eliminating the
26		ratchets." <sup>4</sup> APS is free to disagree

<sup>3</sup> APS Brief at 35:5-14 (emphasis added).

<sup>4</sup> Garrett Tr., Vol. VII 1215:24-25.

	with EFCA's conclusions but it is not free to misstate EFCA's testimony.
<b>Problem:</b> APS incorrectly states EFCA's testimony on a material issue.	"EFCA witness Garrett readily conceded that large commercial customers using his proposed optional rate <i>should be included</i> in the LFCR to minimize the loss of revenue from this so-called 'revenue neutral' proposal." <sup>5</sup>
<b>Correction:</b>	Mr. Garrett was clear that he believes it is unnecessary to subject the Optional Rate to the LFCR but that he suggested it was an option for the Commission to consider if it was concerned about this issue in spite of the lack of evidence supporting the lost fixed cost claim.
<b>Problem:</b> APS posits an argument that EFCA never made and attributed it to EFCA.	"EFCA is simply wrong in its conclusion that the ratchet eliminates the incentive to reduce demand" <sup>6</sup>
<b>Correction:</b>	EFCA has repeatedly argued that the ratchet mutes and sends inefficient price signals that put up barriers to the adoption of energy storage, which can be averted through an optional non-ratcheted design. <sup>7</sup> EFCA never argued that ratchets provide no incentive to

<sup>5</sup> APS Brief 35:8-11 (emphasis added).

<sup>6</sup> APS Brief 38:7-8.

<sup>7</sup> Garrett Tr., Vol. VII at 1202:15-1203:5.

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	reduce demand, only that those incentives are risky, inefficient, and ultimately dissuade customers from adopting energy storage. <sup>8</sup>
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This reply brief will refute each of APS' claims and arguments while demonstrating that the Optional Rates are cost based, revenue neutral, will not result in a cost shift, and are the best means of effectuating the Commission's objectives as stated in its decisions in the UNS and TEP rate cases to shift rate design away from demand ratchets and towards cost based rates that will promote adoption of energy storage and peak demand reduction.

## II. RESPONSE TO APS.

### A. Comparing the Optional Rates to NEM is an Unsupported Scare Tactic.

APS claims that EFCA's proposed three-part rate is essentially a continuation of NEM.<sup>9</sup> There are *simply no similarities* between this proposal and NEM.<sup>10</sup> NEM requires a credit to the customer for exported power; APS alleges the credit for this exported power is too high, therefore, this credit acts as a subsidy according to critics. In this case, there is no payment to the customer at all. Further, the proposed design of the Optional Rates – a three-part rate with a demand charge – is the *exact rate design* that APS argued *in this case* was imperatively needed to incent the exact behavior EFCA is looking to support.<sup>11</sup>

The Optional Rates do not provide for the Company or any other customer to pay any amount to another customer. Ironically, APS is the sole entity advocating for direct payments to customers with energy storage technology,<sup>12</sup> whereas the Optional Rates are specifically meant to avoid any subsidization of energy storage in favor of adopting a cost-based solution that removes barriers to energy storage adoption.<sup>13</sup> Further, unlike NEM,

<sup>8</sup> Garrett Tr., Vol. VII at 1203:6-11.

<sup>9</sup> APS Brief at 34:1-2.

<sup>10</sup> Garrett Reply Test., EFCA Ex. 14 at 14:1-5.

<sup>11</sup> Garrett Tr., Vol. VII at 1218:21-1220:19.

<sup>12</sup> Snook Tr., Vol. V at 812:9-813:12.

<sup>13</sup> Garrett Tr., Vol. VII at 1224:20-1226:1.

1 the Optional Rates are specifically designed to send price signals to customers to reduce  
2 peak demand.

3 If anything, the Optional Rates track APS' proposed "solution" to mitigate alleged  
4 cost shift and under recovery resulting from NEM. Specifically, EFCA is advocating for  
5 adoption of a three-part demand rate that the Company argued "rewards customers for  
6 reducing both their energy and their demand" and is "linked to reductions in both the  
7 utility's grid costs and energy costs and therefore will reduce any adverse impacts on other  
8 customers."<sup>14</sup> It is important to note that up until the end of APS' last rate case, this rate  
9 class was subject to an unratcheted three part rate like that proposed by EFCA, yet still  
10 recovered all its costs.<sup>15</sup> This unequivocally demonstrates that unratcheted three-part rates  
11 do not cause a cost shift in this customer class.

12 In its Brief, APS alleges that the NEM comparison holds because EFCA is  
13 proposing to bury an incentive in a rate.<sup>16</sup> Again, it is important to note that the rate design  
14 EFCA proposes is the exact same three-part rate design that APS argued was desperately  
15 needed to *remove imbedded rate subsidies*.<sup>17</sup> APS cannot have it both ways.

16 In sum, APS' argument comparing NEM to the Optional Rates does not stand up  
17 under scrutiny.

18 *B. The Optional Rates are Designed to Address a Real and Pressing Issue facing*  
19 *APS and its Customers.*

20 APS belittles the Optional Rates and argues they are a "'solution' to a non-existent  
21 problem."<sup>18</sup> Despite APS' claim, the record is clear that the Optional Rates are designed to  
22 address very real and pressing problems. First, APS projects that its significant near-term  
23 load growth will cause its ratepayers to incur billions of dollars in liability for APS'  
24 investment in additional peak generation.<sup>19</sup> Because the Optional Rates have the potential  
25 to defer future infrastructure investments, they can help mitigate and defer the need for

26  
27 <sup>14</sup> Miessner Direct Test., APS Ex. 4 at 7:15-18.

<sup>15</sup> See EFCA Ex. 9, *see also* Snook Tr., Vol V at 873:17-20.

<sup>16</sup> APS Brief at 68:23-25.

28 <sup>17</sup> Miessner Direct Test., APS Ex. 4 at 37:1-8.

<sup>18</sup> APS Brief at 36:20-36:21.

<sup>19</sup> Snook Tr., Vol. VII at 1193:16-19.



1 such future investments. This significant future investment constitutes a real problem for  
2 the ratepayers that will carry this financial burden. Moreover, the Optional Rate solves the  
3 very real problem that the demand ratchet stands as a barrier to large customers adopting  
4 peak reducing technology.

5 **i. The problem of load growth**

6 It is imperative for the Commission to take steps such as adoption of the Optional  
7 Rates to begin mitigating the need for new infrastructure and eliminating the future cost  
8 burden faced by its customers. In fact, APS witnesses Snook<sup>20</sup> and Miessner<sup>21</sup> both argued  
9 that it was “imperative” that rate design be gotten right to get customers to reduce peak  
10 demand as quickly as possible. Paying for billions of dollars in peaking plants over the next  
11 fifteen years is a real and existing “problem” for APS ratepayers who foot the bill for this  
12 expense.<sup>22</sup>

13 **ii. Storage can help solve the problem of spiraling load growth.**

14 Not only has APS recognized the incredible scale and cost of its future resource  
15 investments, but the Company also recognizes that consumer resources such as energy  
16 storage technology are capable of reducing the extent of these investments. For example,  
17 APS witness Wilde stated that “[b]attery storage is anticipated to play a role in APS’s future  
18 resource fleet” and that APS would not be waiting to investigate this “important  
19 resource.”<sup>23</sup> Company witness Bordenkircher opined that “battery storage can offer a  
20 number of benefits to the grid, including: providing generation capacity, ancillary services  
21 (such as voltage support, frequency regulation and spinning reserves), and facilitating the  
22 deferment of certain distribution equipment purchases and upgrades if placed in key  
23 areas.”<sup>24</sup>

24 APS witness Snook agreed that “customers [that] can reduce their peak load or their  
25 load at the time of system peak, [] can reduce the need for the company to invest in these  
26 gas resources” and then affirmatively stated that APS is “counting on [its] customers to

27 <sup>20</sup> Snook Direct Test., APS Ex. 11 at Exhibit LRS-05DR “APS Long-Range Rate Plan” at 9, 13.

28 <sup>21</sup> Miessner Direct Test., APS Ex. 4 at 15:26-16:9.

<sup>22</sup> Snook Tr., Vol. VII at 1193:16-19.

<sup>23</sup> Wilde Direct Test., APS Ex. 19 at 11:1-13.

<sup>24</sup> Bordenkircher Direct Test., APS Ex. 9 at 13:1-6.



1 reduce 25 percent of the 5,000 megawatts [needed to satisfy demand growth over the next  
2 fifteen years].”<sup>25</sup> And as EFCA witness Garrett explained, LGS customers’ participation in  
3 energy storage investment will be of particular importance to meet these desired peak  
4 demand reductions because “[a]n LGS customer moving load off peak could potentially  
5 move as much load as 200 residential customers.”

6 Accordingly, not only are the Optional Rates designed to mitigate the problem of  
7 rapidly escalating load growth, but in removing barriers to energy storage, these rates will  
8 also have the effect of encouraging adoption of a resource that APS itself believes is critical  
9 to mitigate the need for expansive investment in future resources. The Company’s  
10 resistance to the Optional Rates and the removal of barriers to energy storage suggests that  
11 APS wishes to build the vast majority of the projected resources itself and pass along the  
12 costs to its customers. Rather, the Commission should act in accordance with its prior  
13 directives disfavoring ratchets by adopting the Optional Rates and therefore reducing the  
14 peak demand of its customers.

15 *C. Adoption of the Optional Rates is the Best Means of Removing Barriers to*  
16 *Energy Storage.*

17 The Optional Rates present a simple and effective method of encouraging  
18 technology that reduces system peak without resorting to complex subsidization. The  
19 Optional Rates will be effective because they provide meaningful price signals for peak  
20 reduction, while utilizing a cost-based, revenue neutral rate design. The Optional Rates are  
21 a far better alternative to APS’ inadequate storage incentive proposal, both due to their  
22 inherently superior design characteristics and the rate design barriers retained in APS’  
23 proposition.

24 **i. The current rate structure does not encourage energy storage.**

25 Despite overwhelming proof to the contrary, APS argues that the current demand  
26 ratchets provide adequate incentive to install peak reducing storage<sup>26</sup> and, in its brief, APS  
27 claims that the ratchet “enhances” the price signal sent by the normal monthly demand  
28

<sup>25</sup> Snook Tr., Vol. VII at 1193:20-1194:1.

<sup>26</sup> Lockwood Tr., Vol. II at 230:4-10.

1 charge featured in the Optional Rates.<sup>27</sup> If this were the case, APS' witnesses could have  
2 identified a storage project installed by any LGS customer under the LGS Ratchet Rates.  
3 Yet APS was unable to identify even a single customer with storage in this rate class.<sup>28</sup>

4 EFCA demonstrated that the demand ratchets can act as unavoidable fixed  
5 charges,<sup>29</sup> which is a conclusion also reached by SWEEP,<sup>30</sup> Commission Staff,<sup>31</sup> and  
6 NARUC.<sup>32</sup> These parties also agreed that fixed charges do not send a price signal to reduce  
7 demand because the charge negates the benefit of the reduction.<sup>33</sup>

8 The Optional Rates employ a monthly demand charge that sends a consistent price  
9 signal to reduce demand, unlike the ratchet. The monthly demand charge reflects the  
10 customer's actual monthly demand, and in turn, rewards those customers who reduce  
11 demand immediately. This then encourages customers to reduce demand during system  
12 peak as much as possible where a customer on a ratchet does not get a signal to lower by  
13 more than 20% from their previous 12-month peak demand.<sup>34</sup> Even APS witness Miessner  
14 agreed that monthly demand charges send more immediate price signals to reduce demand  
15 than ratcheted rates.<sup>35</sup> APS' own expert witness, Ahmad Faruqui, explained the rate  
16 design's price signals best - "[i]f a customer took service under a three-part rate [without a  
17 ratchet], the use of battery storage, or other demand-reducing technologies, would reduce  
18 the customer's bill. This reduction in the customer's bill is an economic value that forms  
19 the basis of the price signal created by three-part rates."<sup>36</sup> Thus, by the Company's own  
20 admission, the Optional Rates provide a superior price signal for adoption of energy  
21

22 <sup>27</sup> APS Brief at 38:13-14.

23 <sup>28</sup> Lockwood Tr., Vol. II at 244:8-10; Miessner Tr., Vol. III at 469:17-22; Bordenkircher Tr., Vol. IV at 594:4-8;  
24 Snook Tr., Vol. V at 877:22-878:5.

25 <sup>29</sup> Garrett Tr., Vol. VII at 1220:17-20, 1240:21-1241:2.

26 <sup>30</sup> Schlegel Tr., Vol. VII at 1155:20-1156:16 (responding "yes" when asked if a ratchet is similar to a fixed charge and  
27 if a monthly demand charge sends a better price signal).

28 <sup>31</sup> Smith Tr., Vol. VI at 1000:7-22 (stating that typically, "a demand ratchet built into rates is to ensure cost recovery  
if the customers' demand drops off after a certain point.").

29 <sup>32</sup> Distributed Energy Resources Rate Design and Compensation, EFCA Ex. 11 at 114.

30 <sup>33</sup> See Miessner Tr., Vol. III at 446:6-13 ("if you can't reduce the charge, it sends a price signal that says here is my  
cost of service for you, but it isn't a price signal you can react to or reduce."); Smith Tr., Vol. VI at 999:20-1000:6;  
Garrett Tr., Vol. VII at 1220:14-19.

31 <sup>34</sup> Garrett Direct Test., EFCA Ex. 13 at 5:14-19.

32 <sup>35</sup> Miessner Tr., Vol. III at 445:16-24.

33 <sup>36</sup> Faruqui Direct Test., APS Ex. 22 at 17:17-25.

1 storage, as they both provide the immediate price signal needed to reduce peak demand  
2 and eliminate the disincentive inherent in the essentially fixed ratchet charge.

3 **ii. The Optional Rates are Cost-Based and Revenue Neutral.**

4 APS has been inconsistent regarding the issue of the revenue neutrality of the  
5 Optional Rates. During the hearing APS witness Lockwood both admitted that the Optional  
6 Rates were revenue neutral and expressed that APS appreciated that EFCA's rates were  
7 revenue neutral.<sup>37</sup> APS witness Miessner later agreed the rates were designed to be revenue  
8 neutral to the average customer in the class<sup>38</sup> (which is how rates are designed), but then  
9 changed his testimony to argue they were not revenue neutral depending upon which  
10 customers adopt the rates.<sup>39</sup> Importantly, Miessner admitted he had not done any analysis  
11 to confirm APS' alternative and inconsistent argument that the Optional Rates are not  
12 revenue neutral.<sup>40</sup>

13 Despite APS' unsupported claims, the Optional Rates are clearly cost-based and  
14 revenue neutral. The Optional Rates were developed using billing determinants provided  
15 by APS, and are designed to charge customers based on their cost of service. EFCA witness  
16 Garrett adjusted the demand charge to correspond with the elimination of the demand  
17 ratchet and declining block tiers in the case of the E-32L rate,<sup>41</sup> as well as the off-peak  
18 demand charge for the TOU rate.<sup>42</sup> APS witness Miessner acknowledged that under the  
19 Optional Rates, APS would likely recover its grid costs from the average customer in the  
20 class, which is indicative of the Rates' cost basis.<sup>43</sup>

21 Finally, EFCA witness Garrett explained that the rates are revenue neutral in that  
22 "you would collect the same amount if they had the ratchets or didn't have the ratchets.  
23 And so, in other words, they're neutral between the two options."<sup>44</sup> APS witness Miessner  
24

25  
26 <sup>37</sup> Lockwood Tr., Vol. I at 140:14-17, 231:8-16.

27 <sup>38</sup> Miessner Tr., Vol. III at 423:6-11.

28 <sup>39</sup> Miessner Tr., Vol. III at 465:13-22.

<sup>40</sup> Miessner Tr., Vol. III at 465:13-22.

<sup>41</sup> Garrett Reply Test., EFCA Ex. 14 at 15:6-8.

<sup>42</sup> Garrett Reply Test., EFCA Ex. 14 at 16:1-5.

<sup>43</sup> Miessner Tr., Vol. III at 423:6-11.

<sup>44</sup> Garrett Tr., Vol. VII at 1231:19-23.

1 accepted this assertion as true.<sup>45</sup> Thus, no credence should be given to the argument that  
2 the Optional Rates are not both cost-based and revenue neutral.

3 **iii. The Demand Ratchet, Declining Block Rate, and Off-Peak Demand**  
4 **Charges are all Critical Barriers to Storage Deployment. APS'**  
5 **Current and Proposed LGS Rates Retain Them.**

6 EFCA identified three rate design elements that act as barriers to storage  
7 deployment in this proceeding; the demand ratchet, declining block demand rate, and off-  
8 peak demand charge. These troubling features would all be retained under APS' alternative  
9 storage proposal.<sup>46</sup>

10 *a. Staff Witness Smith's Testimony is not an endorsement of the*  
11 *Demand Ratchet.*

12 APS claims that the ratchet has benefits that mitigate its significant downsides,<sup>47</sup>  
13 and cites Staff witness Smith's testimony as evidence of these benefits. Smith also made  
14 clear in his testimony that demand ratchets include significant disadvantages, including  
15 those raised by EFCA and that he was not endorsing the demand ratchet rate design.<sup>48</sup>  
16 Smith points out that "[o]nce a ratchet level is hit, the customer would have a lower  
17 incentive to conserve during all other hours of the year, particularly if the energy rate is  
18 low."<sup>49</sup> APS touts Smith's testimony as endorsing the ratchet for "promoting equitable rate  
19 design,"<sup>50</sup> yet he also states "[d]emand ratchets may also be perceived as being inequitable.  
20 It may seem unfair to a customer to be required to pay for kW's that they did not actually  
21 use during the current month, especially if the customer's low level of demand during other  
22 months frees up capacity which can be used by other customers."<sup>51</sup>

23 //

24  
25  
26 <sup>45</sup> Miessner Tr., Vol. III at 423:6-11.

27 <sup>46</sup> Garrett Tr., Vol. VII at 1226:2-7.

28 <sup>47</sup> APS Brief at 40:4-23.

<sup>48</sup> Smith Reply Test., Staff Ex. 11 at 23:14-24:4.

<sup>49</sup> Smith Reply Test., Staff Ex. 11 at 23:16-18.

<sup>50</sup> APS Reply Brief at 40:8-9.

<sup>51</sup> Smith Reply Test., Staff Ex. 11 at 24:1-4.

1                    *b. The Off-Peak Demand Charge is Inappropriate and a Disincentive*  
2                    *to Storage.*

3            APS argues that the off-peak demand charge featured in the E-32L TOU rate  
4            “properly incentivizes” storage.<sup>52</sup> To support this assertion, APS references the off-peak  
5            demand charge used in the R-Tech residential rate.<sup>53</sup> This comparison is inapposite  
6            because, unlike the off-peak charge in the E-32L TOU rate, the R-Tech rate includes an  
7            exemption for the customer’s first 5 kW of demand.<sup>54</sup> This exemption limits the application  
8            of the off-peak charge, and unlike the charge in the E-32L TOU rate, it is possible to avoid  
9            this charge entirely. As such, the off-peak charge is not as likely to materially impact R-  
10           Tech customers as it will with the E-32L TOU customers. APS knows that there is this  
11           meaningful difference between these charges yet describes the two as though they were the  
12           same.

13                    **iv. The Ratchet Includes Multiple Barriers to Storage Deployment.**

14            APS mistakenly asserts EFCA’s “primary complaint is that the ratchet inhibits first  
15            year savings from storage.”<sup>55</sup> The demand ratchet rate design creates several additional  
16            barriers to energy storage, each of which was identified and substantiated in the hearing,  
17            yet ignored by APS in its brief.

18            First, EFCA demonstrated that the demand ratchet makes the investment in energy  
19            storage unreasonably risky.<sup>56</sup> APS’ own independent rate design expert acknowledges that  
20            the ratchet creates undue risk for customers.<sup>57</sup> An unexpected surge in demand occurring  
21            at any moment for the E-32L rate or during any on-peak hour for the E-32L TOU rate can  
22            wipe out an entire year of expected savings, not just in the first year.<sup>58</sup> Critically, for both  
23            the E-32L and E-32L TOU rate, even if this surge happens hours or even months away  
24  
25

26            <sup>52</sup> APS Brief at 37:19-38:5.

27            <sup>53</sup> APS Brief at 38:1-3.

28            <sup>54</sup> See Settlement Agreement, Exhibit F.

<sup>55</sup> APS Brief at 39:4.

<sup>56</sup> Garrett Tr., Vol. VII at 1203:6-20.

<sup>57</sup> Garrett Direct Test., EFCA Ex. 4 at Ex. B, “A Conversation About Standby Rates,” Ahmad Faruqui.

<sup>58</sup> Garrett Tr., Vol. VII at 1202:18-1203:20.

1 from the actual system peak, the customer's bills are impacted as if this surge occurred at  
2 the time of the system peak.<sup>59</sup>

3 Next, numerous parties agreed that the ratchet acts as a fixed charge that, once set,  
4 sets a minimum demand amount for a customer for a full year.<sup>60</sup> Fixed charges do not send  
5 any price signal at all and thereby do not encourage or reward peak demand reduction.<sup>61</sup>

6 Further, the ratchet does not send a price signal to lower usage below 80% of the  
7 customer's annual peak in any given year. Thus, the incentive to maximize peak reductions  
8 with energy storage is eliminated once the ratchet is set.

9 EFCA also proved that the ratchet rate design causes customers to get charged at  
10 the time of system peak, for demand that the customer may not be placing on the system at  
11 that time. Indeed, the ratchet structure may discourage a customer from reducing demand  
12 during the time of system peak if the customer had achieved its individual peak earlier in  
13 the year. In this respect, EFCA exposed what the Commission has already ruled; that the  
14 demand ratchet "may be characterized as a substitute for rates that actually reflect cost  
15 [causation]."<sup>62</sup>

16 EFCA also demonstrated that the muted price signal in the ratchet means that a  
17 customer always must wait 12 months in order to recognize the benefit of any reductions  
18 in demand.<sup>63</sup> This price signal is attenuated and even Miessner admitted that a monthly  
19 demand charge sends a more immediate price signal to the customer.<sup>64</sup>

20 The declining block rate and off-peak demand charges represent additional poorly  
21 designed price signals of the current rates and reduce a storage customer's savings every  
22 year that they remain in place.<sup>65</sup> Of course, the fact that ratchets do not permit full  
23 recognized savings in the first year post-adoption is also a critical flaw in the rate design  
24 that would seek to encourage peak demand reduction. This issue alone could easily

25  
26 <sup>59</sup> Garrett Reply Test., EFCA Ex. 14 at 4:14-21.

27 <sup>60</sup> Schlegel Tr., Vol. VII at 1155:20-1156:16; Smith Tr., Vol. VI at 1000:7-22; Garrett Tr., Vol. VII at 1220:17-20,  
1240:21-1241:2; EFCA Ex. 11, *Distributed Energy Resources Rate Design and Compensation* at 114.

28 <sup>61</sup> Garrett Tr., Vol. VII at 1202:25-1203:5.

<sup>62</sup> Commission Decision No. 75697 at 83:5-10, 86:9-28.

<sup>63</sup> Garrett Reply Test., EFCA Ex. 14 at 5:1-5.

<sup>64</sup> Miessner Tr., Vol. III at 445:16-24.

<sup>65</sup> Garrett Tr., Vol. VII at 1203:21-1204:20.



1 eliminate 10% of the savings of a storage project with a 10-year service life. APS suggests  
2 that creative contract terms for energy storage might mitigate these results but offered  
3 absolutely no evidence to support this presumption.<sup>66</sup> It is unclear to EFCA how you could  
4 adequately contract around so many fatal flaws inherent in the current rates.

5 As SWEEP witness Schlegel explained, the best approach to encouraging energy  
6 efficiency development is not through incentives designed to overcome barriers, but  
7 instead to simply remove the barrier itself.<sup>67</sup> Thus, only effective way to encourage storage  
8 development is to eliminate these barriers through adoption of the Optional Rates.

9 *D. No Cost Shift will result from the Optional Rates.*

10 APS makes the unsubstantiated claim that the Optional Rates will result in a  
11 “substantial” cost shift.<sup>68</sup> Although APS makes a series of confusing references to the  
12 Optional Rates revenue neutrality<sup>69</sup> and the size of E-32L class<sup>70</sup> in making its cost shift  
13 argument, to the best of EFCA’s understanding, APS’ primary argument is that a cost shift  
14 will result because the revenue it collects from the demand ratchet and off-peak demand  
15 charges will not be recovered once those mechanisms are removed. This argument ignores  
16 that the Optional Rates account for the elimination of these poor rate design elements by  
17 building them into the unratcheted demand charge included in the Optional Rates.<sup>71</sup>

18 APS posits another misleading argument when it opines that “it is possible to assess  
19 at least some of the risk” that the Optional Rates will cause a cost shift by comparing them  
20 against the E-32 L rates proposed by the Settlement Agreement<sup>72</sup> and cites EFCA witness  
21 Garrett’s testimony regarding the adjustment to the demand rate as evidence of this risk.<sup>73</sup>  
22 APS points out that elimination of the demand ratchet would require that demand rates be  
23 increased by \$7 million,<sup>74</sup> and suggests that this is somehow a warning of some impending  
24 cost shift.

25 <sup>66</sup> Miessner Tr., Vol. III at 459:25-460:14; APS Brief at 39:18-40:3.

26 <sup>67</sup> Schlegel Tr., Vol. VII at 1156:24-1157:9

27 <sup>68</sup> APS Brief at 35:15.

28 <sup>69</sup> APS Brief at 36:13-19.

<sup>70</sup> APS Brief at 35:16-18.

<sup>71</sup> See Garrett Reply Test., EFCA Ex. 14 at 15-16

<sup>72</sup> APS Brief at 35:23-36:1.

<sup>73</sup> APS Brief at 36:2.

<sup>74</sup> APS Brief at 36:2-3.



1 This is misleading and also does not account for the benefits of reduction in peak  
2 demand. First, APS omits that the \$7 million it identifies from this class only requires a  
3 modest 5% increase in the demand charges of only those customers selecting one of the  
4 Optional Rates.<sup>75</sup> Importantly, this increase makes sure that the Optional Rates are revenue  
5 neutral to the current rates and has no impact on the rates of those not opting into the  
6 Optional Rates. Specifically, EFCA witness Garrett explained that “[t]he demand charges  
7 are increased by a little more than 5 percent” for the very purpose of ensuring that the  
8 Optional Rates would be revenue neutral and not result in a cost shift.<sup>76</sup> In other words, by  
9 increasing the demand charge by 5% to compensate for the loss of the ratchet the average  
10 customer’s payments over the course of the year will be unchanged.

11 Further, APS ignores the additional savings that will be realized through the  
12 Optional Rates. As EFCA witness Garrett opined, in the long term “the idea is that [the  
13 Optional Rates] will save all customers substantial amounts of money from load reductions,  
14 because the new capacity will be deferred or reduced . . . .”<sup>77</sup> So even though the customers  
15 may eventually pay less under the Optional Rates, the Company and its customers will also  
16 save money in deferring or avoiding investment in additional resources to meet peak  
17 demand. And as described in greater detail below, even if the Commission shares APS’  
18 unwarranted fear that a cost shift would ensue, the solution is not to abandon the Optional  
19 Rates, but to make this rate subject to the LFCR or to review this rate prior to the next rate  
20 case in accordance with the proposal set forth below.

21 APS offered no analysis to support or quantify its “cost shift” claim, yet APS  
22 describes this alleged shift as “substantial.” In an unusual twist, APS even criticized EFCA  
23 for not quantifying the cost shift,<sup>78</sup> the existence of which only APS is claiming. APS  
24 alleges the existence of a cost shift without quantifying or offering analysis to support its  
25 allegation and then criticizes EFCA for not quantifying and supporting this allegation.

26  
27 <sup>75</sup> Garrett Tr., Vol. VII at 1211:1-15; *see also* EFCA Ex. 9, “[EFCA’s] Thirty Third Set of Data Requests To [APS]  
Regarding The Application To Approve Rate Schedules Designed To Develop A Just And Reasonable Rate Of Return  
Docket No. E-01345A-16-0036 and Docket No. E-01345A-16-0123 April 18, 2017” (“Data Request 33”).

28 <sup>76</sup> Garrett Tr., Vol. VII at 1211:6-12.

<sup>77</sup> Garrett Tr., Vol. VII at 1217:12-19.

<sup>78</sup> APS Brief at 35:23.

1           *E. APS' Opposition to the Optional Rates is Motivated by Business Interests, Not*  
2           *its Customers.*

3           APS alleges that EFCA is promoting the business interests of its members by  
4 proposing the Optional Rates.<sup>79</sup> EFCA is not afraid to admit that, like other intervenors in  
5 this docket, it is offering its position on issues that concern it. APS however, should not  
6 be permitted to act as if it is not taking positions that are in its business interest. To that  
7 end, it is important to note that when customers reduce their peak demand, the need for  
8 additional infrastructure is diminished.<sup>80</sup> APS makes a return on the infrastructure it builds  
9 to serve peak demand.<sup>81</sup> It would make sense that APS would oppose the Optional Rates  
10 from a business perspective because the more infrastructure avoided, the less infrastructure  
11 APS can justify building.

12           *F. APS Falsely Alleges EFCA "Concedes" Its Optional Rates Cause a Cost Shift.*

13           Whether intentional or not, APS makes the false statement that EFCA "conceded"  
14 that customers electing the optional rate "should be included in the LFCR" because EFCA  
15 does not deny that its Optional Rates cause a cost shift.<sup>82</sup> This assertion is false and  
16 unsupported. EFCA witness Garrett unequivocally stated that "I don't really think [an  
17 LFCR is] necessary [ ]. We should implement the optional non-ratcheted rate for storage  
18 customers, and it should, I believe, be based on the rates I provided since those are the  
19 billing determinants and revenues from the company."<sup>83</sup>

20           EFCA's discussion regarding the potential use of the LFCR arose out APS'  
21 contention that the demand ratchets were put in place in the last rate case in exchange for  
22 the LFCR not being charged to its E-32L customers.<sup>84</sup> EFCA then suggested that because  
23 it was getting rid of the ratchet in its Optional Rates, it would not object if the Commission  
24 chose to subject the customers on the Optional Rates to the LFCR.<sup>85</sup>

25  
26 <sup>79</sup> APS Brief at 35:2-5, 36:14-16, 37:3-8.

27 <sup>80</sup> Wilde Direct Test., APS Ex. 19 at 16:8-18; Garrett Tr., Vol. VII at 1218:21-1220:19.

28 <sup>81</sup> Lockwood Tr., Vol. III at 223:7-9.

<sup>82</sup> See APS Brief at 35:7-11.

<sup>83</sup> Garrett Tr., Vol. VII at 1228:21-1229:3.

<sup>84</sup> Miessner Tr., Vol. III at 350:23-351:8.

<sup>85</sup> Garrett Tr., Vol. VII at 1227:21-1228:14.

1 Thus, it has been EFCA's position that while unnecessary, if and only if the  
2 Commission believes there is risk that APS will not recover all its fixed costs utilizing a  
3 non-ratcheted rate, then EFCA does not object to the imposition of the LFCR.

4 *G. The Decisions in the TEP and UNS Rate Cases are both Informative and*  
5 *Applicable.*

6 APS contends that "no Commission decision is binding precedent,"<sup>86</sup> and therefore,  
7 TEP and UNS decisions should apparently be ignored. Yet to do so would be to clearly  
8 ignore applicable Commission statements that are instructive to the issue at bar.

9 The striking similarities between the TEP and UNS decisions and the Optional Rates  
10 issue before the Commission in this proceeding illustrate that the decisions are informative  
11 and applicable. The TEP decision specifically states that an optional rate not featuring a  
12 demand ratchet should be made available to LGS customers adopting storage technology,  
13 as a ratcheted rate design "may be incompatible with battery storage technology."<sup>87</sup>  
14 Commission Staff recognized that the TEP decision "required TEP to make a non-ratchet  
15 rate available to the LGS customer class" and then concluded that it "supports that  
16 decision."<sup>88</sup>

17 Both decisions examined the application of demand ratchets to the respective  
18 utilities' large general service customers.<sup>89</sup> In each case, the Commission, in reaching its  
19 determination, viewed ratchets as a flawed ratemaking tool and did not identify any unique  
20 circumstances or qualify its decision in any way by finding that the ratchet was  
21 inappropriate *only* for customers of TEP and UNS.<sup>90</sup> Indeed, the Commission held that  
22 ratchets can send incorrect price signals and are a substitute for rates that actually reflect  
23 cost causation.<sup>91</sup>

24 As pointed out in EFCA's opening brief,<sup>92</sup> Commission efforts to reduce peak  
25 demand through energy storage are not limited to just the TEP and UNS decisions, but also

26 <sup>86</sup> APS Brief at 41:2.

27 <sup>87</sup> Commission Decision No. 75975 at 188:15-18.

28 <sup>88</sup> Staff's Initial Closing Brief at 27:1-5.

<sup>89</sup> See Commission Decision No. 75697; Commission Decision No. 75975.

<sup>90</sup> See Commission Decision No. 75697; Commission Decision No. 75975.

<sup>91</sup> Commission Decision No. 75697 at 83:5-10, 86:9-28.

<sup>92</sup> EFCA Post Hearing Brief at 12:3-8.

1 include Commissioner Tobin's "Reducing System Peak Demand Costs" workshop<sup>93</sup> and  
2 the approval of APS' own \$4 million storage program under its Demand Side Management  
3 Implementation Plan.<sup>94</sup>

4 APS also argues that the TEP and UNS cases are not applicable because EFCA did  
5 not propose the elimination of declining block and off-peak demand rate structures in those  
6 cases.<sup>95</sup> Here again, APS' criticism does not hold up to scrutiny.

7 Neither TEP nor UNS's LGS rates had a declining block demand rate or an off-peak  
8 demand charge like APS.<sup>96</sup> The only trait bearing any resemblance to APS' E-32L rates is  
9 what TEP terms an "off-peak excess" demand charge for its LGS Time-of-Use rate, yet  
10 unlike the E-32L TOU rate, this off-peak charge is only applicable to demand read "in  
11 excess (i.e. positive incremental amount above) of 150% of that billing period's On-Peak  
12 measured demand."<sup>97</sup> The charge is therefore very limited in its application, and does not  
13 present the same critical barrier to storage that the unavoidable off-peak charge featured in  
14 APS' E-32L TOU rate does. In sum, EFCA did not propose the elimination of these  
15 mechanisms in the UNS and TEP cases because they simply did not exist and APS'  
16 criticism is unwarranted and should be rejected.

17 *H. The LGS Customers in this Proceeding Have Not Opposed the Adoption of the*  
18 *Optional Rates.*

19 APS intimated that the LGS customers intervening in this proceeding oppose the  
20 Optional Rates.<sup>98</sup> Yet the fact of the matter is that the LGS intervenors have simply not  
21 opined in favor or opposition to the Optional Rates, they have remained wholly silent on  
22 this issue. As EFCA witness Garrett pointed out, one possible reason for the silence on this  
23 issue is that the Optional Rates proposal was not raised fully until after the settlement,

24  
25 <sup>93</sup> See Commission Docket No. E-00000J-16-0257, "Request for New Docket – Reducing System Peak Demand  
Costs" (July 22, 2016).

26 <sup>94</sup> See Commission Decision No. 75679.

27 <sup>95</sup> APS Brief at 43:5-7.

28 <sup>96</sup> See Commission Docket No. E-04204A-15-0142, "UNS Notice of Compliance Filing," at, Tariffs Attachment  
thereto, original sheet numbers 220-221-2 (Aug. 22, 2016); Commission Docket No. E-01933A-15-03222 "TEP  
Notice of Compliance Filing," Tariffs Attachment thereto, original sheet numbers 220-221-3 (Feb. 28, 2017).

<sup>97</sup> Commission Docket No. E-01933A-15-03222 "TEP Notice of Compliance Filing," Tariffs Attachment thereto,  
original sheet numbers 221-221-3 (Feb. 28, 2017).

<sup>98</sup> APS Brief at 34:22-34:4.

1 meaning that the parties may have lacked either the interest or resources to address a wholly  
2 new issue at that juncture.<sup>99</sup>

3 The only evidence bearing on the Optional Rates suggests that there is far more  
4 support than opposition. As discussed above, various Commission decisions and  
5 documents evidence support of non-ratcheted LGS rates.<sup>100</sup> In the UNSE and the TEP case,  
6 actual customers did weigh in and expressed opposition to the demand ratchet, not support  
7 for it as APS suggests.<sup>101</sup>

8 *I. If the Commission has Concerns About the Efficacy of the Optional Rates, it*  
9 *Could Modify the Optional Rates to Serve As a Pilot Program Subject to*  
10 *Automatic Commission Review Prior to the Next Rate Case.*

11 Although EFCA presented substantial evidence that the Optional Rates are ideal as  
12 designed, it also proposed several modifications that the Commission could adopt if it  
13 wishes to proceed more cautiously while still moving forward consistent with numerous  
14 Commission precedents and a move toward using technology to reduce system peak  
15 demand. These optional modifications include: 1) adopting the LFCR as a component of  
16 the Optional Rates to act as a failsafe should APS' fears of lost fixed costs come to pass<sup>102</sup>;  
17 2) setting a threshold for storage nameplate capacity (recommendation of 10% previous  
18 year's peak customer demand) that must be met by a customer prior to qualifying for the  
19 Optional Rates to prevent customers from using trivial investments in energy storage to  
20 access the non-ratcheted rates<sup>103</sup>; and/or, 3) broadening the Optional Rates to permit  
21 adopters of any energy efficiency technologies to enter this class so that the Optional Rates  
22 don't favor any energy efficient technology over another.<sup>104</sup>

23 If the Commission wishes to proceed in a very conservative manner one other  
24 possibility exists. The Commission could modify the Optional Rates to effectively operate  
25 as a pilot program triggering an automatic review to assess its efficacy and impacts.

26 <sup>99</sup> Garrett Tr., Vol. VII at 1237:12-17.

27 <sup>100</sup> Commission Decision No. 75697 at 83:5-10, 86:9-28.

28 <sup>101</sup> Commission Decision No. 75975 at 90:4-91:23 (Pima County); Commission Decision No. 75697 at 80:23-81:9  
(Farm Produce Association of the Americas)

<sup>102</sup> Garrett Tr., Vol. VII at 1228:6-1229:7.

<sup>103</sup> Garrett Tr., Vol. VII at 1223:2-18; 1229:10-21.

<sup>104</sup> Garrett Tr., Vol. VII at 1255:16-1256:17.



1 Specifically, EFCA suggests that when and if, prior to the filing of APS' next rate case, the  
2 pilot program reaches 15% of existing E-32L and E-32L TOU customers by number or  
3 when the customers taking service under the Optional Rates have installed battery storage  
4 that would be capable reducing peak demand in an amount equal to 15% of total peak  
5 demand for the E-32L and E-32L TOU classes from the last year before the Optional Rates  
6 are put in place, whichever comes first, an automatic Commission review would be  
7 triggered. Such a pilot program would give the Commission an opportunity to check in on  
8 the progress of the Optional Rate.

9 To reiterate, EFCA does not believe any modification to the Optional Rates is  
10 necessary and, in fact, believes any modification would primarily serve as a barrier to the  
11 utilization of peak reducing energy storage. But the unfounded concerns raised by APS  
12 should not serve as a total bar to adoption of the Optional Rates. EFCA has now presented  
13 four potential modifications that could be adopted to address APS' concerns while still  
14 providing a meaningful ratchet-free rate option that is needed to mitigate the Company's  
15 projected growth.

16 *J. The Settlement Agreement Should not be Set Aside or Modified from its*  
17 *Proposed Form.*

18 As the Post-Hearing Briefs demonstrated, the vast majority of the parties support  
19 adoption of the Settlement Agreement proposed herein. EFCA agrees that the Settlement  
20 Agreement presents a fair and balanced compromise of the issues addressed therein and  
21 will ultimately benefit APS' customers. But recognizing that the Commission has the  
22 discretion to reject the Settlement Agreement in whole or in part, EFCA formally reserves  
23 its right to object to and appeal any ACC decision that denies or modifies any aspect of the  
24 Settlement Agreement.

25 *K. APS Erroneously States that there is a Cap on the R-Tech Rate.*

26 With regard to the Settlement Agreement itself, EFCA believes the record should  
27 be clear that the R-Tech rate does not place a cap on the number of participants that can  
28 take service under the rate as APS alleges in its Brief. The R-Tech rate provides for an  
automatic Commission review of the rate once 7,000 customers have signed up for the

1 rate.<sup>105</sup> This is not a cap at all, but a provision requiring the Commission to review and  
2 give direction once a benchmark is hit.

3 **III. CONCLUSION.**

4 For the reasons set forth above and in EFCA's Post-Hearing Brief, EFCA requests  
5 that the following relief be granted:

6 (a) Approve the proposed Settlement Agreement without modification; and

7 (b) Adopt EFCA's Optional Rates as proposed.

8 Although EFCA advocates for approval of its Optional Rates as-is, it is not opposed  
9 to adoption of the Optional Rates with the modifications described herein as well as in its  
10 Post-Hearing Brief.

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<sup>105</sup> See Settlement Agreement, APS Ex. 29 at Section 17.7



1 Respectfully submitted this 1<sup>st</sup> day of June, 2017.

2  
3 /s/ Court S. Rich

4 Court S. Rich

5 Attorney for Energy Freedom Coalition of America  
6

7 **Original and 13 copies filed on**  
8 **this 1<sup>st</sup> day of June, 2017 with:**

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13 *I hereby certify that I have this day served a copy of the foregoing document on all parties  
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